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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,047	10/01/2003	Leo Cain	CD77/01	7716
49716	7590	03/07/2005	EXAMINER	
EDWARD P. DUTKIEWICZ, ESQ. EDWARD P. DUTKIEWICZ, P.A. 640 DOUGLAS AVENUE DUNEDIN, FL 34698-7001			HANSEN, JAMES ORVILLE	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/677,047	CAIN, LEO
	<b>Examiner</b>	<b>Art Unit</b>
	James O. Hansen	3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: ____.                                    |

**DETAILED ACTION**

***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.  
  
3. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 1 & 4, the phrase "and the like" renders the claims indefinite because the claims may include elements not actually disclosed, thereby rendering the scope of the claims unascertainable. See MPEP § 2173.05(d). In Claim 2, the phrases "the bottom" & "the top" lines 4 & 5 respectively, do not have a proper antecedent basis. In Claim 3, the phrase "the bottom panel" does not have a proper antecedent basis. In Claim 4, the phrase "the rear face" does not have a proper antecedent basis.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Happ [U.S. Patent No. 6,135,584]. Happ (figures 1-5) teaches of a vertical peg board shelf system comprising: a cabinet (10) in a rectilinear configuration; a plurality of U-shaped rails (35) secured to and facing upwardly from a bottom and facing downwardly from a top; a plurality of slidable peg board sheets (49) between the rails; and aligned rows and columns of horizontal apertures (52) through the sheets with associated hooks (76) positioned in the apertures.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Happ in view of Slivon et al., [U.S. Patent No. 6,394,566]. Happ teaches applicant's inventive claimed structure as disclosed above, but does not show the cabinet as having wheels. Slivon (figures 1-5) is cited as an evidence reference to show that it was known to put wheels (12) on the bottom of a cabinet structure (11) in an analogous art. Accordingly, it would have been obvious to a person of ordinary skill in the art at the time the

invention was made to modify the cabinet of Happ so as to incorporate wheels as taught by Slivon because the addition of wheels to Happ's cabinet would provide greater portability and maneuverability since the cabinet could be "rolled" from place to place as opposed to manually carrying or utilizing other equipment [hand-truck] to displace the cabinet.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Happ in view of Marcus [U.S. Patent No. 3,269,550]. Happ teaches applicant's inventive claimed structure as disclosed above, but does not show the cabinet as having a tool support & bar assembly. Marcus (figures 1-4) is cited as an evidence reference to show that it was known to mount a tool support & bar assembly (10) onto a peg-board structure (fig. 1) for example. Accordingly, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the cabinet of Happ so as to incorporate a tool support & bar assembly as taught by Marcus because this arrangement would provide Happ's cabinet with a receptacle for nuts, screws and bolts [fasteners] while also providing a useful supporting means for storing tools, i.e., screwdrivers, wrenches & pliers, that are utilized with the fasteners.

***Allowable Subject Matter***

9. Pending further review and consideration, Claim 1 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

**Conclusion**

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wright, Boes et al., Erismann, Sager, Berg, German publication 216707, Swiss publication 358208, Henning, Hansell et al., Simonek and Swink describe storage structures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 703-305-7414. The examiner can normally be reached on Mon.-Fri. 8-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James O. Hansen  
Primary Examiner  
Art Unit 3637

JOH  
March 3, 2005